

IN THE SUPREME COURT OF IOWA

No. 16-0267

STATE OF IOWA,)
Plaintiff-Appellee,)
)
vs.)
)
MICHAEL SCHEFFERT,)
Defendant-Appellant.)

APPEAL FROM THE DISTRICT COURT FOR BLACKHAWK COUNTY
THE HONORABLE NATHAN A. CALLAHAN

APPELLANT'S FINAL BRIEF

Thomas J. Viner (AT0008104)
Viner Law Firm, PC
228 2d Street SE
Cedar Rapids, IA 52401
T: (319) 531-1333
F: (319) 200-4538
tviner@vinerlawfirm.com

ATTORNEY FOR DEFENDANT

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

This case should be remanded for resentencing because of abuse of discretion by the Trial Court:

THE DISTRICT COURT ERRED IN DENYING THE MOTION TO SUPPRESS

State v. McIver, 858 N.W.2d 699 (Iowa 2015)

State v. Tyler, 830 N.W.2d 288 (Iowa 2013).

State v. Burbridge, No.14-1324 at 3 (Iowa Court of Appeals 2015).

State v. Kinkead, 570 N.W.2d 97 (Iowa 1997).

State v. Louwrens, 792 N.W.2d 649 (Iowa 2010).

Whren v. United States, 517 U.S. 806 (1996).

State v. Tague, 676 N.W.2d 197 (Iowa 2004).

STATEMENT OF THE CASE

Nature of the Case

This is an appeal of the Blackhawk County District Court Judgment and Sentence order entered by the Honorable Judge Nathan A. Callahan on or about February 11, 2016, wherein Respondent-Appellant Michael Scheffert has filed a Notice of Appeal on February 9, 2016. Appeal has been perfected by timely filing of the Notice of Appeal and by Combined Certificate.

Course of Proceedings

Defendant was arrested on March 30, 2015 and later charged by Trial Information with one count of Possession of a Controlled Substance (Marijuana) pursuant to Iowa Code §124.401(5), a Serious Misdemeanor. Defendant filed a Motion to Suppress challenging the police stop of his vehicle; hearing on the motion was held October 23, 2015, with the motion being denied. The case proceeded to a nonjury trial on the Minutes of

Testimony. Following a non-jury trial on the Minutes Mr. Scheffert was convicted of Possession of a Controlled Substance (Marijuana) and sentenced on February 11, 2016 and received a 90 day suspended sentence, \$315.00 fine, 35% surcharge, a \$125.00 Law Enforcement Initiative surcharge, and his driver's license privileges were suspended for 180 days. App.10-11. Defendant challenges in this appeal the denial of the Motion to Suppress. Notice of Appeal was filed and this appeal brought. App.14.

STATEMENT OF FACTS

Defendant was the driver of a motor vehicle in Blackhawk County Iowa on or about March 30, 2015. App.23-24. (MTS Trans.19:21 to 20:4).¹ Deputy Peterson of the Blackhawk Sheriff's office initiated a police stop of Mr. Scheffert's in the Falls Access at Beaver Valley Road vehicle, at approximately 12:58 am. App.16, 18. (MTS Tr.8:17-9:3, 11:12-17). The reason for the stop was that it was a park area and the vehicle was not allowed to be in the park after hours (10:30 p.m. close time). App.21. (MTS Tr.14:13-20). Defendant testified that there was no signage that this was a park or that it had a closing time – Defendant believed he was driving within all Iowa law and Rules of the Road. App.24. (MTS Tr.20:12-14).

¹ Appellant will hereafter cite to the Motion to Suppress and Trial Transcripts by following the transcript page number with a colon, and then the line number(s).

Deputy Harris, another officer who responded to the scene, testified on August 27, 2015 that there had been a sign but he wasn't sure of when. App.21-22. (MTS Tr.14:24 to 15:3). He testified that he asked a conservation officer and he was told that there is no sign, but the deputy added "there should be [a sign]." App.21-22. (MTS Tr.14:24 to 15:3). Following the stop Defendant was searched and charged with Possession of a Controlled Substance.

The State at the Motion to Suppress hearing relied on Iowa Code §461A.46 (2015) regarding the closure of State Parks at 10:30 p.m., incorporated to apply to this County Park. App.25-26. (MTS Tr.21:22 to 22:6). The State provided that Iowa Code §350.5 allows for application of State park rules to County parks. App.26. (MTS Tr.22:1-4). The State also relied on Iowa Code §805 as to the punishment for being in a county or state park after hours, such punishment being a \$15.00 fine. App.26. (MTS Tr.22:6-8). Defendant argued that the State did not show by a preponderance of evidence that probable cause existed to initiate a police stop, and that the State lacked reasonable suspicion of criminal activity upon which to initiate a stop. App.27. (MTS Tr.23:1-2). The question at the hearing was whether or not Defendant knew he was in a park absent signage of such and if he could be stopped for driving on a Level B gravel road for a

park violation. App.19. (MTS Tr.12:19-20). The motion was denied.

App.7-9.

ROUTING STATEMENT

This case should be transferred to the Iowa Court of Appeals pursuant to the criteria of [Iowa R. App. P. 6.1101(3)(a) (2015)] as a case which involves questions of applying existing legal principles.

ARGUMENT

THE DISTRICT COURT ERRED IN DENYING THE MOTION TO SUPPRESS

Standard of Review:

Defendant raises constitutional challenges to the stop and ensuing criminal conviction the standard is *de novo* review by this Court. (“We review claims regarding constitutional rights *de novo*.”) *State v. McIver*, 858 N.W.2d 699, 702 (Iowa 2015) (internal citations omitted) (*quoting State v. Tyler*, 830 N.W.2d 288, 291–92 (Iowa 2013)). *See, State v. Burbridge*, No.14-1324 at 3 (Iowa Court of Appeals 2015). “We make “an independent evaluation of the totality of the circumstances as shown by the entire record.” *State v. Kinkead*, 570 N.W.2d 97, 99 (Iowa 1997).” *Burbridge* at 3. *See also State v. Louwrens*, 792 N.W.2d 649, 651 (Iowa 2010). The Court is not bound to the

findings of the District Court was reviews the totality of the circumstances as shown by the entire record. *Louwrens* at 651.

Preservation of Error: Defendant filed a Motion to Suppress and a hearing on such was held. App.6. A bench trial was held on the charge and the Court found Defendant guilty. Defendant filed a timely Notice of Appeal following the Sentencing hearing on February 11, 2016, challenging the conviction, including therein the Motion to Suppress ruling.

Argument: Defendant was pulled over on a public roadway absent signage that it was a county park and without a posting of park hours. Absent such designations it is unreasonable to uphold the constitutionality of the Stop under the Iowa and U.S. Constitutions.

“The Fourth Amendment of the United States Constitution prohibits ‘unreasonable search and seizures.’ *Tyler*, 830 N.W.2d at 291. “Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of [the Fourth Amendment].” *Whren v. United States*, 517 U.S. 806, 808 (1996). An automobile stop is constitutionally 4 permissible when the officer has either (1) probable cause due to observation of a traffic violation or (2) reasonable suspicion, supported by articulable

facts that a criminal act has occurred or is occurring. *State v. Tague*, 676 N.W.2d 197, 201- 04 (Iowa 2004).” *Burbridge at 3 -4*. Defendant’s protection against unreasonable seizures was violated by this police stop of the automobile he was driving.

Was the applied “Park Closure” basis sufficient?

Iowa Law under 461A.46 prohibits being in a State park after 10:30 p.m. Iowa Code section 461A.46(2015) entitled “**CLOSING TIME**” states the following:

Except by arrangement or permission granted by the director or the director's authorized representative, all persons shall vacate state parks and preserves before ten-thirty o'clock p.m. Areas may be closed at an earlier or later hour, of which notice shall be given by proper signs or instructions. The provisions of this section shall not apply to authorized camping in areas provided for that purpose.

The State argued herein that the Falls Access county park herein was under the same State Park rule as allowed by Iowa Code Section 350.5(2015) entitled “**Regulations – Penalty -- Officers**” which states the following in relevant part:

The county conservation board may make, alter, amend or repeal regulations for the protection, regulation, and control of all museums, parks, preserves, parkways, playgrounds, recreation centers, and other property under its control. The regulations shall not be contrary to, or inconsistent with, the laws of this state.

However, what is lacking is any showing that the Blackhawk County Board of Conservation had in fact made the State rule apply to this County Park. No evidence was presented on this issue other than the Deputy's testimony that the park closes at 10:30 p.m. There is no showing that there is a legal basis to believe the park closed at 10:30 p.m. and therefore the State failed to show by a preponderance of evidence that the driving witnessed (driving on Beaver Valley Road past 10:30 p.m.) was a violation of law. This is a mistake of law by the officer and the stop and any ensuing evidence should be suppressed.

In the alternative Defendant argues that even if the Conservation Board had approved the State Park rule as to this County Park that absent signage it is unreasonable to find a driver in violation of the rule to be driving on a roadway.

If the Park was properly closed at 10:30 p.m. under Iowa Law and the Conservation Board, is notice required?

Deputy Harris testified that there were not signs posting the park hours in or around the roadway where Mr. Scheffert was pulled over. App.20. MTS Tr.13:13-23). The Deputy testified further that he believed there should be signage but there was no evidence by the State whether or not there was signage at the time of the stop. App.21. (MTS Tr.14:2-3). The

Deputy added that he thought there was a sign at one point but later clarified that it was not a ‘closed times’ sign but was rather just “county access” and not hours of operation. App.23. (MTS Tr.18:8-10). Mr. Scheffert testified that he didn’t know he was in a park or an “access area.” App.24. (MTS Trans.20:15-18).

Elsewhere in Iowa Code 461A provides for the requirement of the Commission to provide signage in areas where it deems the speed limit to be too dangerous. Iowa Code section **461A.36 SPEED LIMIT** provides the following:

The maximum speed limit of all vehicles on state park and preserve drives, roads and highways shall be thirty-five miles per hour. All driving shall be confined to designated roadways. Whenever the commission shall determine that the speed limit hereinbefore set forth is greater than is reasonable or safe under the conditions found to exist at any place of congestion or upon any part of the park roads, drives or highways, *said commission shall determine and declare a reasonable and safe speed limit thereat which shall be effective when appropriate signs giving notice thereof are erected at such places of congestion or other parts of the park roads, drives or highways.* (Emphasis added).

The corollary drawn is that the requirement of signage to restrict speed further from the standard of 35 miles per hour (see above) should also create a requirement that the State/County/Commission post hours to support the 461A.46 restriction on park hours. Or at the very least the boundaries of the park and designation that the roadway in question is in a park. The evidence

shows that the road was indistinguishable from any other roadway in terms of being in a County park or not. The park closing time cannot be effective in this case without signage of such. The Deputy testified that he did not know of any and that the Conservation officer he spoke to said there is none.

CONCLUSION

The underlying basis for the stop fails and the conviction and sentence should be reversed and the case dismissed at State cost. The stop was conducted without showing that the County Board under Iowa Law had in fact adopted a park closing time. Further, there was no signage of the park being closed or that the roadway in question was in fact inside a park. The stop is unconstitutional under Iowa and Federal constitutions.

REQUEST FOR ORAL ARGUMENT

Counsel for Michael Scheffert respectfully requests that he be heard in oral argument upon the submission of this case.

ATTORNEY COST CERTIFICATE

I certify that the true cost of producing the required copies of this brief was \$ _____. I paid that amount in full.

_____/s/ *Thomas J. Viner* _____
Thomas J. Viner AT0008104

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE
REQUIREMENTS**

1. This brief complies with the type-volume limitation of Iowa R.App. 6.903(1)(g)(1) or (2) because this brief contains **1837** words excluding the parts of the brief exempted by Iowa R.App.P. 6.903(g)(1).
2. This brief complies with the typeface requirements of Iowa. R. App. P. 6.903(1)(e) and the type-style requirement of Iowa. R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Word 2011 in 14-point Times New Roman font.

_____/s/ *Thomas J. Viner* ____
Thomas J. Viner AT0008104
Viner Law Firm, PC
228 2d Street SE
Cedar Rapids, IA 52401
T: (319) 531-1333
F: (319) 200-4538
tviner@vinerlawfirm.com

ATTORNEY FOR DEFENDANT

CERTIFICATE OF FILING AND SERVICE

I, Thomas J. Viner, hereby certify that I have filed this Final Brief by
the EMDS filing system on October 31, 2016.

Clerk of the Supreme Court of Iowa, Blackhawk County Attorney, Iowa
Attorney General

I further certify that I served this Proof Brief by U.S. mail to each of
the following:

Defendant, Michael Scheffert

Blackhawk County Courthouse
Clerk of Court

Honorable Nathan A. Callahan.

_____/s/ *Thomas J. Viner* ____
Thomas J. Viner AT0008104